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BLM NEW MEXICO STATE OFFICE, FIRE 001

7/22/93  
OPTIONAL FORM 99 (7-90) *GIVE ME A CALL WHEN YOU LOOK AT THIS*

## FAX TRANSMITTAL

# of pages = 4

To: *GARY STRICKY* From: *RIK WYMER*Dept./Agency: *TWO-MINERALS* Phone #: *435-7411*

Fax #: \_\_\_\_\_ Fax #: \_\_\_\_\_

NSN 7540-01-317-7885 5099-101 GENERAL SERVICES ADMINISTRATION

ACTION

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STATE OFFICE  
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Instruction Memorandum No. 93-287

Expires 9/30/94

To: All State Directors

From: Director

Subject: Application of the Statute of Limitations to Oil and Gas Drainage Cases

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**ISSUE:** Assigning priority to the high volume of drainage cases currently awaiting technical review has raised the issue of the application of the statute of limitations to the assessment of compensatory royalty in oil and gas drainage cases. The Bureau of Land Management (BLM) currently has no specific policy guidance related to this issue.

**OBJECTIVE:** This Instruction Memorandum establishes BLM priorities for drainage cases in light of issues involving possible application of the statute of limitations to the assessment of compensatory royalty in Federal oil and gas drainage cases.<sup>1</sup>

**BACKGROUND AND POLICY:** The issue of the proper application of the statute of limitations to Federal oil and gas drainage cases has been raised by numerous BLM field offices over the past several years. Numerous discussions have been held among the various offices the BLM, Minerals Management Service (MMS) and the Office of the Solicitor. From those discussions, and in light of such court decisions as are currently available, the BLM is now able to formulate a drainage case strategy in a manner that will allocate resources to cases with the greatest chance to withstand potential statute of limitations challenges in Federal Court and provide the highest return for the use of available resources.

The statute of limitations, if it is held to apply, would be relevant to two aspects of the oil and gas drainage program: first, the earliest date from which compensatory royalties can be collected; and second, the time we have available to take action on a drainage case once it has been identified by the BLM.

<sup>1</sup> Guidance for Indian lease cases is still under discussion. Guidance specific to Indian drainage cases will be prepared and disseminated in the near future.

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BLM NEW MEXICO STATE OFFICE, FIRE

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If the action to collect compensatory royalty is deemed to be an action for money damages, the relevant limitation period ordinarily would run 6 years from the date that the facts material to the right of action were known, or reasonably could be known, by the United States, or 1 year after final decisions have been rendered in applicable administrative proceedings, whichever is later (28 U.S.C. 2415 (a) and 2416 (e)). Some drainage may well occur before the BLM or MMS knows all facts material to its right of action, due to the need for audit or reservoir analysis. Another relevant limitation statute is that of the Debt Collection Act, 31 U.S.C. 3716, which permits administrative offsets even where judicial action is barred.

To minimize potential risks under the statute of limitations, we urge you to send the decision letter well within 6 years from the date the case is established. For several reasons, we instruct each of your offices not to make a compensatory demand for more than 10 years prior to the first appealable action. There appears to be a large backlog of cases established within the last 10 years which are more productive subjects of your office's resources.

All BLM offices conducting drainage reviews should immediately take the following steps:

1. Administratively close all cases where there has been no appealable BLM action taken and more than 10 years has elapsed since the cessation of drainage (this supersedes IM 89-12 Change 2 which called for the retirement of all cases where drainage ceased more than 6 years before the present); *Identify all cases > 10yrs old (offending well) Determine if still active - No = close*
2. Administratively close all cases where significant drainage has not occurred in the 10 years immediately preceding the decision letter (regardless of the amount of drainage that occurred prior to the 10-year period); *Determination of significant drainage requires geol. & eng. review - Priority?*
3. Accelerate the review process between case establishment and issuance of the decision letter, as necessary, to stay well within the 6-year statute of limitations; *How?*
4. Assign highest priority to drainage cases which have the greatest potential assessment for the 6-year period directly preceding the decision letter; and, *Can't determine w/o geol, eng. sec. review - use priority to estimate*
5. Assign second-highest priority to drainage cases which have the greatest potential assessment for the 10-year period directly preceding the decision letter. *See a bar.*

*Concern: Priority for doing this vs Indian drainage & diligence.*

**Procedural Notes:**

1. As in the past, constructive notice plus a "reasonable time" should be used to establish the starting point for the assessment;
2. As noted previously, case establishment may be deemed to start the statute of limitations clock running, if the statute of limitations is held to apply. Be aware, however, that if the drainage is brought to our attention by any other means prior to case establishment, that event may serve the same purpose;
3. The MMS should make an effort to collect monies due within 1-year of the last appeal or the decision letter when no appeal is made. If it fails to do this, it is possible the Federal Government ultimately may not be able to collect. Although we have no control over MMS actions, all offices are to follow-up frequently on cases once MMS has been requested to bill the lessee;
4. The Office of the Solicitor also has advised us that some modification to the decision letter is advisable to include a demand for payment. Standard language for the decision letter is currently being developed and will be transmitted as soon as possible for use in all future cases; and,
5. Indian drainage cases are to be treated as they have been in the past; i.e., all Indian drainage cases are to be pursued regardless of their financial "significance," and Indian drainage cases normally will continue to receive top priority over Federal cases.

**IMPLEMENTATION AND SCHEDULE:** All offices with drainage program responsibilities are to immediately determine the effect of these policies on their drainage backlog and reprioritize their remaining cases per the instructions contained in this memorandum. Drainage screens should be likewise adjusted. All affected offices are to recalculate their drainage backlog and advise the Director (WO-610) of these new numbers by September 30, 1993. Statistics submitted should include the percent change due to implementation of these instructions.

**COORDINATION:** Close coordination between the BLM and MMS will be necessary to insure that all actions are taken in a timely manner in order that no cases are compromised.

**BUDGET IMPLICATIONS:** Additional time may be required to adjust the drainage screen and identify and administratively close appropriate drainage cases. However, costs associated with this effort should be more than offset by a reduction in overall workload.

**CONTACT PERSON:** Questions may be addressed to John Bebout (WO-610) at 202-653-2182.

Signed

Dawn Slaughter  
Resources

Authenticated

Assistant Director, Energy and Mineral

Hillary A. Oden

Directives, WO873